

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to eligibility to participate in autism support program

The Human Services Department hereby amends Chapter 22, “Autism Support Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 225C.6 and 2017 Iowa Acts, House File 215.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 225C.6 and 2017 Iowa Acts, House File 215.

Purpose and Summary

These amendments bring the rules in Chapter 22 into alignment with 2017 legislative changes to Iowa Code chapter 225D. 2017 Iowa Acts, House File 215, requires certain health insurance policies, contracts, or plans to provide coverage of applied behavior analysis (ABA) treatment for certain individuals with autism spectrum disorder. Individuals who gain private insurance as a result of this legislation will no longer be eligible for participation in the Autism Support Program (ASP).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3619C**. The Department received comments from four respondents. A summary of the comments and the Department’s responses are as follows:

Comment 1: Four respondents commented that insurance plans for companies with fewer than 50 employees, plans that are self-funded, and plans purchased through the health care exchanges continue to be excluded from the requirement to provide ABA coverage and that families with those plans may not qualify for the ASP because they have incomes over 500 percent of the federal poverty level (FPL). The respondents commented that there is a need for more flexibility in funding alternatives for ABA services.

Department response: The Autism Support Program’s family income limitation requirement is established by the legislature and Iowa Code. The Department does not have the authority to change the limitation through the rule-making process. The ASP rules have been revised to conform to the changes in ABA insurance coverage made by the legislature’s enactment of House File 215. The Department does not have authority to expand the type of plans included or to increase the flexibility of ASP funds.

Comment 2: Two respondents commented that the increased coverage of ABA services by private insurance carriers may have an unintended consequence of increasing the costs to families, whose out-of-pocket costs to their insurer may be higher than the cost share they paid through the ASP, and that this increased cost may make ABA services cost prohibitive for some families.

Department response: The Department does not have authority to expand the eligibility requirements established by the legislation.

Comment 3: One respondent commented that the ASP’s current family income limitation of 500 percent of FPL should be raised to make the program available to more families and that the family cost-share requirement should be lowered because the out-of-pocket costs to families may restrict their ability to access the program.

Department response: The ASP's family income limitation and cost-share requirement are established by the legislature and Iowa Code, and the Department does not have the authority to change the limitation of the cost-share requirement through the rule-making process.

Comment 4: One respondent commented that the income limitation of 500 percent of FPL (or about \$125,500 for a family of four) is too low when compared to the cost of intensive full-time ABA services, which may cost more than \$50,000 annually. The respondent commented that the income limitation should be increased to facilitate access.

Department response: The ASP's family income limitation is established by the legislature and Iowa Code, and the Department does not have the authority to change it through the rule-making process. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Mental Health and Disability Services Commission on April 19, 2018.

Fiscal Impact

This rule making does not result in any additional costs to the Department. It may result in some reduction to the costs of the Autism Support Program, which is funded with 100 percent state dollars, but savings are expected to be less than \$100,000 annually.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—22.1(225D)**, definition of “Eligible individual,” as follows:

“*Eligible individual*” means a child less than 14 years of age who has been diagnosed with autism based on a diagnostic assessment of autism, is not otherwise eligible for coverage for applied behavioral analysis treatment or applied behavior analysis treatment under the medical assistance program, Iowa Code section 514C.28, Iowa Code section 514C.31, or private insurance coverage, and whose household income does not exceed 500 percent of the federal poverty level.

ITEM 2. Amend subrule 22.2(4) as follows:

22.2(4) An individual shall be determined ineligible for coverage of applied behavioral analysis services under the medical assistance program, Iowa Code section 514C.28, Iowa Code section 514C.31, or other private insurance coverage. Proof of insurance coverage and noneligibility for coverage for applied behavioral analysis shall be provided at the time of application and shall include a written denial

of coverage or a benefits summary indicating that the applied behavioral analysis treatment or applied behavior analysis treatment is not a covered benefit for which the applicant is eligible under the Medicaid program, Iowa Code section 514C.28, Iowa Code section 514C.31, or other private insurance coverage.

[Filed 4/19/18, effective 7/1/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.